

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

JENNIFER JOY and MISTY THOMAS,
on behalf of themselves and all others
similarly situated,

Plaintiffs,

v.

MISSOURI HIGHER EDUCATION
LOAN AUTHORITY OF THE STATE OF
MISSOURI d/b/a MOHELA,

Defendant.

Case No. 4:23-CV-01590-SEP

SPENCER MORGAN, FRANCIS NOVAK,
and ROWENA KOENIG, on behalf of
themselves and all others similarly situated,

Plaintiffs,

v.

MISSOURI HIGHER EDUCATION
LOAN AUTHORITY OF THE STATE
OF MISSOURI d/b/a MOHELA, MIGUEL
CARDONA, in his official capacity as
Secretary of the United States Department
of Education, and the UNITED STATES
DEPARTMENT OF EDUCATION,

Defendants.

Case No. 4:24-CV-00147-CDP

**MOHELA’S RESPONSE TO PLAINTIFFS’
NOTICE OF SUPPLEMENTAL AUTHORITY**

Defendant Higher Education Loan Authority of the State of Missouri (“**MOHELA**”) responds to Plaintiffs’ Notice of Supplemental Authority in Support of Plaintiffs’ Opposition to MOHELA’s Motion to Dismiss (Dkt. 47) regarding the United States District Court for the Middle

District of Florida's March 11, 2025 decision in *Coffey v. Higher Education Loan Authority of the State of Missouri*, No. 5:24-CV-270-MMH-PRL.

Coffey purported to apply the Eleventh Circuit's distinguishable "arm of the state" test as articulated in *Manders v. Lee*, 338 F.3d 1304 (11th Cir. 2003). *Manders* employs a four-factor test: "(1) how state law defines the entity; (2) what degree of control the State maintains over the entity; (3) where the entity derives its funds; and (4) who is responsible for judgments against the entity." *Id.* at 1309. By contrast, the Eighth Circuit applies a two-factor test in determining "arm of the state" status: (1) the entity's independence from the State; and, (2) how a money judgment in litigation could affect the State's treasury. *Pub. Sch. Ret. Sys. of Missouri v. State St. Bank & Tr. Co.*, 640 F.3d 821, 827 (8th Cir. 2011).

MOHELA respectfully submits that *Coffey* is not persuasive to this Court's consideration of MOHELA's pending motion to dismiss in view of the fundamental differences in the Eighth Circuit's and Eleventh Circuit's respective "arm of the state" tests. Further, MOHELA advises the Court that on March 24, 2025, it appealed the *Coffey* decision to the Eleventh Circuit under the collateral order doctrine. Moreover, MOHELA notes that district courts in the Eleventh Circuit are not uniform in their application of the *Manders* test to MOHELA. As acknowledged in the *Coffey* decision (at 25 n.8), the only other district court within the Eleventh Circuit to address MOHELA's immunity applied *Manders* and concluded that all four factors supported the finding that MOHELA was immune under the Eleventh Amendment. *See Gowens v. Capella Univ., Inc.*, No. 4:19-CV-362-CLM, 2020 WL 10180669, at *2-4 (N.D. Ala. June 1, 2020).

MOHELA acknowledges that *Coffey* relied in part on the Tenth Circuit's decision in *Good v. Dep't of Educ.*, 121 F.4th 772, 784 (10th Cir. 2024). In a prior response to Plaintiffs' submission of *Good* as supplemental authority (Dkt. 25), MOHELA outlined the significant differences

between the Tenth Circuit’s and Eighth Circuit’s “arm of the state” tests, highlighted *Good*’s failure to address the Supreme Court’s findings with respect to MOHELA in *Biden v. Nebraska*, 600 U.S. 477 (2023), and argued that *Good* does not persuasively support Plaintiffs’ argument that MOHELA is not entitled to Eleventh Amendment immunity under the prevailing Eighth Circuit test. To update this Court, MOHELA also provides notice that it filed a petition for writ of certiorari to the Supreme Court in *Good* on March 12, 2025. See *Missouri Higher Education Loan Authority v. Jeffrey Good*, Case No. 24-992.

Dated: March 25, 2025

Respectfully submitted,

THOMPSON COBURN LLP

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